

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

PARKERSBURG DIVISION

JOHN O'BRIEN RAFFERTY

Petitioner,

v.

CIVIL ACTION NO. 6:04-cv-01278

JAMES BEARD, Secretary Pennsylvania
Department of Corrections,

Respondent.

MEMORANDUM OPINION AND ORDER


Pending before the court is the petitioner's motion for a writ of mandamus [Docket 8]. This action was referred to the Honorable Mary E. Stanley, United States Magistrate Judge, for submission to this court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that the court deny the petitioner's motion for a writ of mandamus.

On May 26, 2005 the plaintiff filed several objections to the Magistrate Judge's *Proposed Findings and Recommendation*. The court has reviewed *de novo* those portions of the Magistrate Judge's *Proposed Findings and Recommendation* to which the plaintiff objects and **FINDS** that the objections lack merit. Specifically, none of the plaintiff's objections address the key issue described in the *Proposed Findings and Recommendation*; namely, that this federal court has no jurisdiction to issue a writ of mandamus to either the Supreme Court of Appeals of West Virginia or the Circuit Court of Wood County or to any judges of those courts.

The court agrees with the Magistrate Judge's thorough analysis of these issues. Accordingly, the court **ADOPTS** the *Findings and Recommendation* of the Magistrate Judge, and **DENIES** the

plaintiff's Petition for a Writ of mandamus as being legally frivolous and failing to state a claim upon which relief can be granted. The court **DIRECTS** the Clerk to send a certified copy of this Written Opinion and Order to Magistrate Judge Stanley, counsel of record, and any unrepresented parties.

ENTER: June 7, 2005



JOSEPH R. GOODWIN
UNITED STATES DISTRICT JUDGE